

Montana Water Court
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Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Montana Department of Fish, Wildlife & Parks

CASE 43B-0480-R-2023

43B 194349-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This Montana Department of Fish, Wildlife & Parks claim appeared in the Preliminary Decree with the following remark:

WATER COURT CASE 43B-410 DATED 05/26/1994 ADDRESSING THE 122 PLACES OF USE WAS NOT IMPLEMENTED. IN ADDITION, A MEMORANDUM FROM THE MONTANA WATER COURT DATED 09/01/2004 HAD AUTHORIZED THE DNRC TO MATCH THE POINT OF DIVERSION WITH THE PLACE OF USE. SEE CLAIM FILE FOR MORE INFORMATION.

The Court reviewed the scanned copy of the claim file. It appears the decision in Temporary Preliminary Decree Case 43B-410 was implemented as the May 3, 1994 Master's Report for Case 43B-410 does include the changes to the place of use; however, correlative changes to the point of diversion were not made. Additionally, the place of use recommended in the 1994 Master's Report is not the place of use that appeared in the Preliminary Decree.

On May 10, 2023 the Montana Department Of Fish, Wildlife And Park's' Response To Issue Remark And Court Observations was filed stating it concurs with the 2004 recommendation to make the point of diversion match the place of use in the Temporary Preliminary Decree Master's Report but noted there are three parcels which should be removed. The Response is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDING OF FACT

This claim is for instream fish and wildlife use for the length of the Yellowstone River from T5S, R8E to T1N, R14E. The place of use recommended in the 1994 Master's Report should be restored, then modified to remove the three specified parcels. The point of diversion should then be modified to match the place of use. As the Preliminary Decree point

of diversion and place of use each contain 122 legal descriptions, it would take many pages to repeat the erroneous set of legal descriptions from the Preliminary Decree, followed by the 119 legal descriptions contained in the corrected point of diversion and place of use. The Post Decree Abstract is attached showing all of these 119 points of diversion and 119 places of use. The issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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cbell@mt.gov

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 194349-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620 0701

Priority Date: DECEMBER 14, 1970

Type of Historical Right: FILED

Purpose (use): FISH AND WILDLIFE

Flow Rate: 1,200.00 CFS

Volume: 395,014.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: YELLOWSTONE RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NW	29	7S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15					
Diversion Means:	INSTREAM					
2			20	7S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15					
Diversion Means:	INSTREAM					
3			19	7S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15					
Diversion Means:	INSTREAM					
4			17	7S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15					
Diversion Means:	INSTREAM					
5			16	7S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15					
Diversion Means:	INSTREAM					
6			9	7S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15					
Diversion Means:	INSTREAM					
7			4	7S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15					
Diversion Means:	INSTREAM					

8		3	7S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
9		34	6S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
10		27	6S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
11		26	6S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
12		23	6S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
13		24	6S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
14		13	6S	7E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
15		18	6S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
16		17	6S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
17		7	6S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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18		8	6S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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19		9	6S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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20		5	6S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
21		4	6S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				

22		3	6S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
23		33	5S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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24		34	5S	8E	PARK
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25		27	5S	8E	PARK
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26		22	5S	8E	PARK
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27		23	5S	8E	PARK
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28		14	5S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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29		11	5S	8E	PARK
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30		12	5S	8E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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31		7	5S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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32		8	5S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
33		5	5S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
34		4	5S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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35		33	4S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				

36		32	4S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
37		28	4S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
38		27	4S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
39		22	4S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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40		21	4S	9E	PARK
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41		16	4S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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42		15	4S	9E	PARK
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43		14	4S	9E	PARK
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44		10	4S	9E	PARK
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45		11	4S	9E	PARK
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Diversion Means:	INSTREAM				
46		2	4S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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47		35	3S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
48		26	3S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
49		23	3S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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50		14	3S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
51		11	3S	9E	PARK
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52		12	3S	9E	PARK
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53		1	3S	9E	PARK
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54		35	2S	9E	PARK
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55		36	2S	9E	PARK
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63		5	2S	10E	PARK
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64		32	1S	10E	PARK
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65		33	1S	10E	PARK
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66		28	1S	10E	PARK
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67		34	1S	10E	PARK
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68		27	1S	10E	PARK
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69		26	1S	10E	PARK
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70		25	1S	10E	PARK
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71		24	1S	10E	PARK
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72		19	1S	11E	PARK
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73		20	1S	11E	PARK
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74		29	1S	11E	PARK
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75		28	1S	11E	PARK
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76		33	1S	11E	PARK
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77		34	1S	11E	PARK
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78		35	1S	11E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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79		36	1S	11E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
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80		1	2S	11E	PARK
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81		6	2S	12E	PARK
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82		31	1S	12E	PARK
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83		5	2S	12E	PARK
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84		32	1S	12E	PARK
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85		29	1S	12E	PARK
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86		21	1S	12E	PARK
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87		28	1S	12E	PARK
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88		22	1S	12E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
89		15	1S	12E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
90		2	3S	9E	PARK
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
91		4	1S	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				

92		3	1S	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
93		2	1S	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
94		1	1S	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
95		35	1N	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
96		36	1N	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
97		25	1N	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
98		24	1N	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
99		30	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
100		19	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
101		20	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
102		17	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
103		16	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
104		15	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
105		9	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				

106		10	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
107		14	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
108		11	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
109	SW	12	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
110	NW	12	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
111	SWNE	12	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
112	NWNE	12	1N	14E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
113		14	1S	12E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
114		13	1S	12E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
115		18	1S	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
116		7	1S	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
117		8	1S	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
118		5	1S	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				
119		9	1S	13E	SWEET GRASS
Period of Diversion:	NOVEMBER 1 TO APRIL 15				
Diversion Means:	INSTREAM				

43B 194349-00 AND 43B 194350-00 SHARE THE SAME POINTS OF DIVERSION WHICH APPLIES TO THE SAME REACH OF THE YELLOWSTONE RIVER.

Period of Use: NOVEMBER 1 TO APRIL 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NW	29	7S	7E	PARK
2				20	7S	7E	PARK
3				19	7S	7E	PARK
4				17	7S	7E	PARK
5				16	7S	7E	PARK
6				9	7S	7E	PARK
7				4	7S	7E	PARK
8				3	7S	7E	PARK
9				34	6S	7E	PARK
10				27	6S	7E	PARK
11				26	6S	7E	PARK
12				23	6S	7E	PARK
13				24	6S	7E	PARK
14				13	6S	7E	PARK
15				18	6S	8E	PARK
16				17	6S	8E	PARK
17				7	6S	8E	PARK
18				8	6S	8E	PARK
19				9	6S	8E	PARK
20				5	6S	8E	PARK
21				4	6S	8E	PARK
22				3	6S	8E	PARK
23				33	5S	8E	PARK
24				34	5S	8E	PARK
25				27	5S	8E	PARK
26				22	5S	8E	PARK
27				23	5S	8E	PARK
28				14	5S	8E	PARK
29				11	5S	8E	PARK
30				12	5S	8E	PARK
31				7	5S	9E	PARK
32				8	5S	9E	PARK
33				5	5S	9E	PARK
34				4	5S	9E	PARK
35				33	4S	9E	PARK
36				32	4S	9E	PARK
37				28	4S	9E	PARK
38				27	4S	9E	PARK
39				22	4S	9E	PARK
40				21	4S	9E	PARK
41				16	4S	9E	PARK
42				15	4S	9E	PARK

43	14	4S	9E	PARK
44	10	4S	9E	PARK
45	11	4S	9E	PARK
46	2	4S	9E	PARK
47	35	3S	9E	PARK
48	26	3S	9E	PARK
49	23	3S	9E	PARK
50	14	3S	9E	PARK
51	11	3S	9E	PARK
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62	6	2S	10E	PARK
63	5	2S	10E	PARK
64	32	1S	10E	PARK
65	33	1S	10E	PARK
66	28	1S	10E	PARK
67	34	1S	10E	PARK
68	27	1S	10E	PARK
69	26	1S	10E	PARK
70	25	1S	10E	PARK
71	24	1S	10E	PARK
72	19	1S	11E	PARK
73	20	1S	11E	PARK
74	29	1S	11E	PARK
75	28	1S	11E	PARK
76	33	1S	11E	PARK
77	34	1S	11E	PARK
78	35	1S	11E	PARK
79	36	1S	11E	PARK
80	1	2S	11E	PARK
81	6	2S	12E	PARK
82	31	1S	12E	PARK
83	5	2S	12E	PARK
84	32	1S	12E	PARK
85	29	1S	12E	PARK
86	21	1S	12E	PARK
87	28	1S	12E	PARK
88	22	1S	12E	PARK
89	15	1S	12E	PARK

90		2	3S	9E	PARK
91		4	1S	13E	SWEET GRASS
92		3	1S	13E	SWEET GRASS
93		2	1S	13E	SWEET GRASS
94		1	1S	13E	SWEET GRASS
95		35	1N	13E	SWEET GRASS
96		36	1N	13E	SWEET GRASS
97		25	1N	13E	SWEET GRASS
98		24	1N	13E	SWEET GRASS
99		30	1N	14E	SWEET GRASS
100		19	1N	14E	SWEET GRASS
101		20	1N	14E	SWEET GRASS
102		17	1N	14E	SWEET GRASS
103		16	1N	14E	SWEET GRASS
104		15	1N	14E	SWEET GRASS
105		9	1N	14E	SWEET GRASS
106		10	1N	14E	SWEET GRASS
107		14	1N	14E	SWEET GRASS
108		11	1N	14E	SWEET GRASS
109	SW	12	1N	14E	SWEET GRASS
110	NW	12	1N	14E	SWEET GRASS
111	SWNE	12	1N	14E	SWEET GRASS
112	NWNE	12	1N	14E	SWEET GRASS
113		14	1S	12E	SWEET GRASS
114		13	1S	12E	SWEET GRASS
115		18	1S	13E	SWEET GRASS
116		7	1S	13E	SWEET GRASS
117		8	1S	13E	SWEET GRASS
118		5	1S	13E	SWEET GRASS
119		9	1S	13E	SWEET GRASS